

FEDERAL RELIGIOUS DISCRIMINATION BILL: WHAT TASMANIAN SHOULD KNOW ABOUT OUR ANTI-DISCRIMINATION ACT BEING OVERRIDDEN



PROTECTING THE VULNERABLE & HOLDING THE POWERFUL TO ACCOUNT:

Questions and answers regarding the proposed federal override of Section 17(1) of the Tasmanian Anti-Discrimination Act

Section 17(1) of the Tasmanian Anti-Discrimination Act protects all Tasmanians from humiliating and intimidating language.

Now, the Federal Government's has proposed a Religious Discrimination Bill that would override this protection by allowing humiliating and intimidating language in the name of religion.

There has been much myth-making about section 17(1). This question and answer sheet tells the truth about this provision. In particular it shows how section 17(1) protects those who are vulnerable to stigma and prejudice, and how it holds the powerful and privileged to account.

What is Section 17(1)?

- Section 17(1) prohibits conduct which offends, humiliates, intimidates, insults or ridicules another person on fourteen grounds including race, age, disability, sexual orientation, gender identity and relationship status
- The conduct must be in relation to public activity such as employment; education, or the provision of goods and services
- The wording of section 17(1) reflects section 18C of the Race Discrimination Act, except section 17(1) covers many more attributes



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Who complains under Section 17(1)?

- Over a third of complaints are on the ground of disability
- Another third are complaints on the grounds of race, gender and age.
- The remaining third of complaints are on the remaining ten grounds.
- Complaints on the ground of sexual orientation and gender identity make up 5 to 10% of complaints.

What good has come from section 17(1)?

- Two landmark cases under section 17(1) were from disability advocate, Judy Huett. One was against Prue MacSween for her derogatory comments about children with disability “holding back” other children. The other was against the Daily Telegraph for its implications that people with disability are lazy.
- Both cases were resolved in conciliation, to the satisfaction of all parties.
- This illustrates the importance of section 17(1) for allowing members of stigmatised minorities to have their voices heard, and to work with powerful institutions to find inclusive solutions (see notes on the Delaney/Porteous case below).
- A high-profile case involving sexual orientation was taken by Robert Williams against an anti-gay flyer distributed by James Durston.
- The flyer asserted that homosexuality was hazardous to health and sinful.
- The Anti-Discrimination Tribunal found the flyer was in breach of section 17(1).
- That decision was appealed to the Supreme Court on the basis of “religious freedom”, but the Tribunal decision as upheld by the Court.
- A flyer like this would be much harder to challenge under Tasmanian law if the Religious Discrimination Bill was passed.

Here are two de-identified case studies of racist language where complaints were made under section 17(1)

G made a complaint on her own behalf and on behalf of her grandchildren. She alleged that her grandchildren were being called names, picked on every day and have been told that ‘black children should not have been born’. She alleges that her grandson is scared to go to school.

O made a complaint on behalf of a local football club of racism during matches involving racist comments from both players and spectators. This included being called ‘niggers’, ‘fucking Africans’ and ‘black cunts’.



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Has section 17(1) fostered a better Tasmania?

- The Anti-Discrimination Act was passed just a year after homosexuality was decriminalised and was Tasmania's commitment to never again demonise a vulnerable minority.
- Today, religious schools conduct LGBTI, disability and race anti-bullying and inclusion program.
- Public, anti-gay hate that was ubiquitous before 1998 has virtually disappeared.
- The same, dramatic increase in inclusion can be seen for other social minorities.
- Tasmania has also seen none of the religious extremism that has plagued the other states, thanks to laws like section 17(1) providing a shield against such extremism.

Are Tasmanian Government policies consistent with section 17(1)

- State Government policies that prevents bullying or promotes inclusion are consistent with section 17(1).
- For example, the Tasmanian Government's school anti-bullying program is based on relevant sections of the Anti-Discrimination Act, including section 17(1).
- The recent Stop and Prevent Bullying Communique supported by the State Government and the community sector also draws its legitimacy from section 17(1).

Do Tasmanians support section 17(1)?

- In 2016 and 17, there were two attempts to water down section 17(1).
- Both initiatives failed in the Upper House because a majority of Upper House members were convinced that section 17(1) provides important protections for vulnerable Tasmanians.

Is this similar to the 18C debate?

Section 18C of the Federal Race Discrimination Act prohibits the same offensive conduct as section 17(1)

- In 2013 the Abbott Government sought to replace the words "offend, insult or humiliate" in section 18C with the term "harass" which would have substantially eroded the current protections against hate speech.
- The Morrison Government's Religious Discrimination Bill water-downs section 17(1) in a way similar to how the Turnbull Government sought to water down 18C.
- The 2013 amendment was blocked in the Senate by Labor, Centre Alliance and Jacqui Lambie.
- The Religious Discrimination Bill override of section 17(1) is a backdoor path to revisiting the amendment of 18C and should be resisted for the same reasons as the failed amendment of 18C.



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Are there other laws that prohibit humiliating and intimidating language?

- Offensive, humiliating and insulting language is prohibited under a large number of statutes.
- This includes legislation covering everything from child care to motor vehicle registration.
- Since 1858 it has been an offence punishable by imprisonment to insult a member of parliament.
- It would be the height of hypocrisy for law-makers to retain a protection that they deny to others.

Is there a problem just having exemptions for religion?

- Allowing humiliating and intimidating speech only in the name of faith privileges one form of speech and one form of belief above all others.
- All citizens should have equal rights and responsibilities under the law regardless of whether they are people of faith.
- When one group has special rights not available to others it undermines the credibility of the law and is an attack on basic Australian values like equality of opportunity and a fair go for all.
- The church child abuse scandal shows the damage done when faith leaders feel they should not be held to the same standard as everyone else.

What will happen if section 17(1) is weakened?

- If section 17(1) is weakened it will no longer offer the protections outlined above.
- Worse, it will send the message that it is okay to humiliate and intimidate people on the basis of who they are.
- It is quite possible we Tasmania will see an upsurge in this kind of conduct, making it crueler and less kind place to live.



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Answering the critics

Is section 17(1) subjective?

- Section 17(1) does not allow someone to complain simply because they feel "offended".
- Whether someone is "offended, humiliated, intimidated, insulted or ridiculed" must be something that would be anticipated by "a reasonable person".
- There is a growing number of court decisions which have established what a reasonable person would anticipate.
- The reasonableness threshold is higher than for the many similar offences, including offending politicians.

Why not allow a religious exemption when there are other exemptions already?

- There are already exemptions that apply to section 17(1) for academic, scientific and artistic purposes, or for acts in the public interest, so why not religious purposes?
- Too often prejudices are expressed under the cover of religion.
- For example, physical disability is said to be a mark of sin and mental disability is blamed on demonic possession.
- Women are told to cover their bodies or risk assaults against them.
- LGBTI people, unmarried partners and single parents are said to be sinful and broken.
- Ensuring equal protection for these groups means guarding against hateful speech under cover of religious values.



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Does Section 17(1) infringe free speech or freedom of religion?

- After the author of the anti-gay flyer mentioned above, James Durston, was found to have breached section 17(1), he appealed to the Supreme Court saying his free speech and freedom of religion were being infringed
- Justice Brett found that sections 17 does not infringe these rights, and that it is valid under the Australian Constitution
- Justice Brett made a careful and rigorous argument that freedom of religion and freedom of speech are not unfettered rights, and that the Tasmanian Anti-Discrimination Act strikes the right balance between these rights and right of citizens to live free from hate

Will section 17(1) actually be overridden?

- The Federal Government has defended its attack on section 17(1) by saying it is not “an override”.
- This may be technically true - the High Court may need to declare section 17(1) to be invalid to the extent it is inconsistent with section 17(1) for the latter to be “overridden” - but the point is semantic.
- The Religious Discrimination Bill clearly limits the operation of section 17(1) so that it is effectively weakened.
- Section 17(1) will effectively be rendered inoperative under the Religious Discrimination Bill.



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Wasn't a bishop hauled before the tribunal to answer for his faith? The facts about Martine Delaney and Archbishop Porteous?

- Supporters of Tasmanian Catholic Archbishop, Julian Porteous, have claimed he was “hailed” before the Tasmanian Anti-Discrimination Commission for simply stating Catholic doctrine on marriage. That is untrue. Here is what actually happened:
- In 2015 Archbishop Porteous distributed a booklet about the Catholic Church’s view on marriage called “Don’t Mess With Marriage”
- In September that year, Martine Delaney lodged a complaint under sections 17 and 19 against parts of the booklet
- In particular, her complaint was against the booklet’s suggestion that same-sex relationships “mess with kids”, and the booklet’s failure to distinguish between Catholic doctrine from scientific fact.
- Martine Delaney had a long history of taking cases against materials that inspired hate against LGBTI people, most of which were successfully resolved in conciliation.
- Ms Delaney said at the time that the goal of her complaint against “Don’t Mess With Marriage” was not to silence the Church but foster a more mature and respectful debate about marriage equality.
- The Archbishop was asked to attend one voluntary conciliation session
- The Archbishop later told a Senate religious freedom inquiry this session as “valuable” and “good” because “I think I understood the other position more clearly as a result of it” (Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into Freedom of Religion and Belief, June 5, 2018, p29)
- In the conciliation session, Ms Delaney presented the Archbishop with a version of “Don’t Mess With Marriage” that included her minimal edits
- When it was clear the Archbishop would not change a single word, Ms Delaney withdrew her case
- The booklet continues to be distributed

What this history shows is that:

- a) The complaint was not against Catholic doctrine, but against the demeaning way that doctrine was presented.
- b) The Archbishop was not “hailed” anywhere and the process was not onerous.
- c) The complaint was not litigious and did not seek to censor the Church because it was withdrawn when it became clear not progress could be made.
- d) The Archbishop’s main problem seems to be that his actions were held to the same standard as everyone else’s.



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What is really behind the attack on section 17(1)?

As we have seen...

- Section 17(1) has allowed members of many different social groups to have their concerns heard, and has brought together people with diverse views to find mutually-satisfactory solutions to their disagreements.
- Section 17(1) has made Tasmania a demonstrably better place.
- Section 17(1) is not unusual in prohibiting offensive conduct, and does not place special burdens on free speech or freedom of religion.

So, why is it under attack?...

- The one feature of section 17(1) that makes it different to other laws that prohibit offensive language is that it generally protects those who are disadvantaged, stigmatized, marginalised and vulnerable from those who are powerful and in positions of authority.
- Section 17(1) is under attack precisely because it protects the vulnerable and holds the powerful to account.

**This, more than anything else, is why we must protect
section 17(1) from being weakened.**



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The attack on an inclusive Tasmania must be stopped

- The Religious Discrimination Bill undermines both the letter and the spirit of Tasmania's world-class anti-discrimination laws.
- It gives permission for the kind of prejudice and hate that will diminish Tasmanian society.
- It tries to turn back the clock to a time when discrimination was acceptable in Tasmania.

what you can do:

Sign the petition and send an email here:

www.equal.org.au/equality_tasmania

Make a submission by October 2nd 2019 to the Religious Discrimination
Bill consultation ForConsultation@ag.gov.au

Write to Tasmania's federal members:

Julie.collins.mp@aph.gov.au

Brian.Mitchell.MP@aph.gov.au

Gavin.pearce.MP@aph.gov.au

Bridget.archer.MP@aph.gov.au

Andrew.wilkie@aph.gov.au

Senator.carol.brown@aph.gov.au

Senator.urquhart@aph.gov.au

Senator.mckim@aph.gov.au

Senator.whish-wilson@aph.gov.au

Senator.colbeck@aph.gov.au

Senator.duniam@aph.gov.au

Senator.chandler@aph.gov.au

Senator.lambie@aph.gov.au

Senator.polley@aph.gov.au